IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION Nos. 4893 & 10420 of 2001

Between:

The Institute of Chartered Financial Analysts of India, Road No.3,

Banjarahills, Hyderabad-500034, rep. by its Registrar, Sri E.N.Murthy.

..... PETITIONER

AND

1.The Assistant Superintendent, R.M.S., Department of Posts,

Hyderabad PSO &BMC, Hyderabad-500 001.

2. Senior Superintendent of Post Offices, RMS Department of Posts,

Kachiguda Station, Kachiguda, Hyderabad 500 027.

3. The Deputy Superintendent of Post Offices,

Department of Posts, Hyderabad City Division, Hyderabad-500 001.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in (a) issuing notice No.BMC/Co5/01 dated 10-03-2001 demanding a payment of Rs.1.63,426/- (b) in issuing Bill No.9 dated 16-03-2001 for Rs.1,77,600/- and refusing to accept any mail from the petitioner till the said amount is paid as arbitrary, illegal, ultravires and

violative of the petitioner's rights guaranteed under Article 14, 19 (1)(a) and 19(1)(g) of the Constitution of India.

WRIT PETITION NO : 10420 of 2001

Between:

The Institute of Chartered Financial Analysts of India Road No. 3, Banjara Hills, Hyderabad 500 034 rep. by its Registrar.

..... PETITIONER

AND

1 Sr. Superintendent of Post offices,
Hyderabad City Division, Hyderabad-1
2 Director Postal Service, office of chief Post Master General , AP. Circle
Dak Sadan, Abids,
Hyderabad-1
3 Chief Post Master General ,
AP Circle Dak Sadan, Abids,
Hyderabad-1
4 Deputy Director General , (PO&I) Department of Posts,
Ministry of Communications, Dak Bhavan, New Delhi
5 Dy.Superintendent of Post Offices
Hyderabad City Division, Hyderabad -1

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in refusing to grant renewal registration of study @ ICFAI on the ground that it is intended for free distribution vide proceeding NO. LII/RNP/HD 930/2001 dated 9/05/2001 is contrary to section 9 to Indian post Offices Act, 1898, arbitrary, illegal, ultravires and violative of the petitioners rights guaranteed under Article 14, 19 (1) (a) of the constitution of India

Counsel for the Petitioners in both the W.Ps.:

Mr.C.Kodanda Ram, Advocate.

For the Respondents: MR.DEEPAK BHATTACHARJEE

The Court Made the Following :

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Common Order:

Both the writ petitions can be disposed of by a common order, since common question of law arises on identical facts.

The petitioner is a registered institute offering specialized Post Graduate level

programmes in financial analysis to cater the growing needs of professionals in the discipline. As a part of academic development to its students both past and present who have passed out of its institute petitioner has started a monthly journal called "***Chartered Financial Analysis***" and registered with the Registrar of Newspapers (RNP) in the year 1995. The magazine was also registered with the Postal Department with registration Tech/26/RNP/City/127, dated 30-08-2000. Petitioner-institute is also publishing journals, like "Study @ ICFAI", "Portfolio Organizer", "Effective Executive", "Treasury Management" and "ICFAI Reader". All the said magazines are registered with the Registrar of Newspapers and also with the Postal Department and obtained license from the Department of Posts for concessional postage and accordingly it circulated the said journals to its subscribers at concessional rates. The "Study @ ICFAI" has been registered with RNP as a registered newspaper at retail selling price free. On the strength of Certificate issued by the Registrar of Newspapers, petitioner wanted registration of "Study @ ICFAI" with the Postal Department for concessional posting under registration No. H/HD-930, dated 12-01-2000 and the petitioner availing the benefit of licence in dispatching the magazines to its subscribers commencing from February, 2000 and made an application on 19-07-2000 to the Senior Superintendent of Post Office, Hyderabad—1st respondent for dispatching the "Study @ ICFAI" with pre-payment on concessional postage by depositing Rs.7,500/- at the rate of Rs.0.15 Ps. per article for 50,000 copies taking on average. Accordingly, the 1st respondent through its letter No.LII/RNP/H-HD-930, dated 10-10-2000 permitted the petitioner to post its mail without pre-payment at concessional rates from November, 2000 onwards and petitioner has availed such facility. When the petitioner-institute delivered more than one lakh copies of "Study @ ICFAI" to the Postal Department on 10-02-2001 for dispatching to its subscribers, the Postal Department accepted the same. While so, the petitioner was served with notice dated 10-03-2001 informing that as per Bill No.7, dated 17-02-2001 the magazine dispatched is charged at 0.25 Ps. for 19,792 copies and 0.15 Ps. for 80,315 copies, and on verification of the postings of February, 2001 issue of "Study @ICFAI" it is noticed that the magazine infringed the conditions of Registered Newspapers and have to be charged at the revised rates at Rs.2/- for 80,315 copies and one rupee for 19,792 copies and claiming an amount of Rs.1,63,426/- from the petitioner-institute. To the said demand petitioner requested clarification and nature of violation for charging the revised rates, to which a reply was sent that any clarification regarding "Study @ ICFAI" may be had from Senior

Superintendent, RMS, Kachiguda Station, Kachiguda, Hyderabad and posting of newspaper is not possible till the revised bill for February, 2001 is cleared. Questioning the notice dated 12-03-2001 petitioner filed W.P.No.4893 of 2001 and obtained an interim order in W.P.M.P.No.6264 of 2001, directing the respondents to accept the mail of the petitioner (which includes "Study @ ICFAI") in accordance with licenses granted by the 5th respondent. It is stated that when the Postal Department refused to receive the mail for the subsequent month i.e. April, 2001 petitioner filed C.C.No.472 of 2001 wherein the Court issued notice. However, after filing contempt case Postal Department accepted the mail of the petitioner-institute, but refused to receive the journal "Study @ ICFAI". Having no other go petitioner dispatched the same by paying higher rates under protest. Meanwhile, provisional renewal was extended till 30-04-2001 in the light of judgment of the Madras High Court. On expiry of provisional extension, 1st respondent vide letter No.LII/RNP/HD 930/2001, dated 09-05-2001 informed the petitioner-institute that renewal of registration of "Study @ ICFAI" English Monthly is not granted by the Chief Postmaster General, as the magazine is intended for free circulation and as such it is not eligible. Questioning the said proceedings W.P.No.10420 of 2001 is filed contending that impugned notice is arbitrary, illegal and was issued without application of mind and contrary to the conditions under which license is granted to the petitioner and also to the provisions of Section 9 of Post Office Act, 1898 (for short' the Act'). Once registration is granted under Section 9 of the Act journal is entitled to concessional postage and there is no discretion left with the respondents either to grant concessional postage or not. The journal "Study @ ICFAI" is registered with the Registrar of Newspapers as a journal, which is to be distributed at free of cost and distributed the same for a period of 16 months and there was never any dispute with regard to cost of journal or its entitlement for concessional postage.

Opposing the writ petition Senior Superintendent of Post Office—1st respondent filed a counter in W.P.No.10420 of 2001 contending that sub-Section (2) of Section 9 of the Act and the Rules made thereunder lay down the procedure for enabling any newspaper to avail the benefit of concessional postal charges. The magazine "Study @ ICFAI is meant for free distribution, which is evident from the entry against column No.5 of Registration Certificate issued by Registrar of Newspapers of India, New Delhi under Registration No.71893/99 dated 12-10-1999. It is also stated that unless

the magazine “Study @ ICFAI” fulfils the conditions prescribed under Rule 30 of Indian Post Office Rules, 1933 (for short ‘the Rules’), petitioner is not entitled to renewal of registration, as was granted in other magazines. During the visit of SSRM, Hyderabad Division at BMC, Nampally, Hyderabad on 08-03-2001 it was noticed that “Study @ ICFAI” publishers brought around 1 lakh articles to be posted under registered Newspapers Category with concessional rates. The contends of the issue “Study @ ICFAI” from the month of March, 2001 vary from copy to copy, and two types of materials under the same title and cover page of the said magazine under registered No.71893/99 with postal registration No.H-HD-930/CPMG A.P. Circle Lr.No.Tech/26/RNP/City/29 dated 30-08-2000 were noticed. Approximately 20,000 articles consist of some news related to articles and advertisements with 24 pages and the remaining approximately 80,000 articles consist of 16 pages in each copy with different material inside seem to be prospectus of a training programme, syllabus, free structure, application form etc. and the bulk mailer is using the cover page of the registered newspaper to dispatch the prospectus, application forms to various candidates at cheaper postal rates causing huge amount of leakage of revenue. Hence, ASRM, BMC directed not to accept 80,000 copies under RNP category and to collect book post rates to transmit the same. Out of 25 pages, 13 pages i.e. more than 50% contain only advertisements. As such these copies are also not satisfying the conditions prescribed for RNP i.e. containing predominately news related articles. Accordingly, necessary instructions were given to ASRM, BMC to accept the articles under *periodical category*, which resulted in calculation of exact amount to be received from the mailer and to issue a notice to him to credit the amount. The interim directions granted by this Court to accept the mail of the petitioner in accordance with the license granted has been complied with, and documents produced by the petitioner for renewal for the year 2001 were verified and found that the magazine “Study @ ICFAI does not fulfil the condition of having atleast 50 bona-fide subscribers as required under Rule 30(3) of the Rules, which is evident from the entry against column No.5 of Registration Certificate issued by the Registrar of Newspapers of India, New Delhi under Registration No.71893/99 dated 12-10-1999. It is admitted by the petitioner in para-4 of the affidavit that renewal of registration under Rule 30 was not granted, but in the light of instructions contained in Directorate letter No.16/21/99-PO dated 06-02-2001 the magazine was allowed to be transmitted at concessional rate till 30-04-2001. Rejection of renewal is strictly in accordance with Rule 30(5) and prayed for dismissal.

Mr. C.Kodandaram, learned counsel for the petitioner contends that if there is any violation of registration with one magazine, law does not permit to take action against the other magazines. In view of the same, the other magazines, namely, “Portfolio Organizer”, “Effective Executive”, “Treasury Management”, “ICFAI Reader” and “Chartered Financial analysis registered with the Postal Department cannot be stopped unless their registration is cancelled for due recovery of the amount from “Study @ ICFAI”. In view of the same, respondents cannot threaten that they will not accept any mail from the petitioner till the past dues on “Study @IFCAI” is recovered is not correct, which is nothing but arm twisting method of recovery as held by the Supreme Court in ***DABUR INDIA LTD. V. STATE OF U.P.*** and the impugned letter is liable to be set aside. Learned Counsel also contends that the newspaper registered with the Postmaster shall be transmitted by post as registered newspaper either from the place of publication thereof and may also be transmitted from any other place with the permission in writing of the Suptd./Senior Suptd. of Post Office under condition 140 of Post Office Guidelines. Since no reasons are assigned in the impugned notice dated 09-05-2001, petitioner need not be traversed to file the writ petition. The reasons, which are not mentioned in the impugned order, cannot be supplemented in the counter as per the law declared by the Apex Court in ***MANEKA GANDHI v. UNION OF INDIA*** and ***MOHINDER SINGH GILL v. CHIEF ELECTION COMMR.***. Learned counsel further contends that when registration initially granted is extended upto 30-04-2001, petitioner is entitled to avail the concessional rates for transmission of “Study@ ICFAI”.

Per contra, Sri Deepak Bhattacharji, learned counsel for the respondent contends that to avail the concessional rates newspaper circulated should be a registered newspaper as defined under sub-Rule (2) of Rule 30, showing the names and addresses of the 50 bona-fide subscribers who have paid their subscription. Even the Certificate of Registration granted in favour of the petitioner clearly discloses that the “Study @ ICFAI” meant for free circulation. In view of the same, petitioner is not entitled to avail concessional rates for its transmission and refusing to renew the same is in conformity with Post Office Act and the Rules made thereunder and only such of the newspapers registered shall be transmitted by post at concessional rates and not otherwise.

In view of rival contentions, the question that falls for consideration is as to whether "Study @ ICFAI" which was registered with the Registrar of Newspapers for free circulation is entitled to benefit of concessional rates of transmission under the Act and the Rules made thereunder, if not rejection of renewal of registration of "Study @ IFCAI" for free distribution is per se valid or not.

In order to appreciate the controversy we have to take the facts as pleaded and the Registration Certificate granted by the Registrar of Newspapers for claiming benefits in the light of statutory provisions.

Section 9 of the Act reads as under:

> "(1) The[Central Government] may make rules providing for the registration of newspapers for transmission by inland post as registered newspapers.
>
> (2) For the purpose of such registration, every publication, consisting wholly or in great part of political or other news, or of articles relating thereto or to other current topics, with or without advertisements, shall be deemed a newspaper, subject to the following conditions, namely :-
>
> (a) that it is published in numbers at intervals of not more than thirty-one days; and
>
> (b) that it has a bona fide list of subscribers."

Rule 30 of the Rules with regard to Registered Newspapers reads as under:

> 30. (1) A Newspaper as defined in Section 9 of the Act and complying with the conditions specified below shall be transmitted by post as registered newspaper from the place of publication thereof and may also be so transmitted from any other place with the permission in writing of the Postmater-General or officer exercising the powers of the Postmaster-General of the Postal Circle in which such other place is situated.

a. The Postmater-General, of the Postal Circle in which it is published or, as the case may be, posted and the period for which its registration or the last renewal thereof as the case may be, remains in force shall not have expired.

b. The full postage shall be prepaid unless the newspaper is exempted from prepayment of postage by a valid licence.

c. to (h) x x x x x x x x x

> (2) An application for the first registration of a newspaper for the purpose of clause (a) of sub-rule (I) in a Postal Circle referred to therein shall, have in the case of a newspaper printed or published under the orders of any government in India or for official purposes, be made in the form prescribed for the purpose by the Director-General, and be accompanied

by two copies of the latest issue of the newspaper sought to be registered, a list showing the names and addresses of atleast fifty bona fide subscribers who have paid their subscriptions, and

i. x x x

ii. x x x x x

Application for renewal of registration shall be made so as to reach the officer concerned atleast one month before the date of expiry of the previous registration and shall be accompanied by two copies of the latest issue of the newspaper. A late fee of Rs.5 shall be charged for each application for renewal received later than the last working day of the calendar month preceding to last month of the period of previous registration. Renewal in all cases shall be granted only when the Postmaster-General or other officer referred to in sub-rule (I) is satisfied that the provisions of sub-Section (2) of Section 9 of the Act are fulfilled. Where the application for renewal is received after the date of expiry of the previous registration, a late fee of Rs.10 shall be charged and in other respects is shall be dealt with in the same manner as an application for renewal received in the last month of previous registration."

The Deputy Director General (PO) issued necessary directions to be followed while granting registration and also renewal. When the registration is to be renewed or to be granted originally it may be open to the Postmaster-General to come to the conclusion that the magazine cannot be regarded as a newspaper for the purposes of Section 9 of the Act but after having once held that it do does come within the purview of Section 9 of the Act, it is not open to the Postmaster-General, on the same set of facts, to come to a different conclusion some times afterwards during the period when the registration is in force and cancel the registration on that ground.

In ***SEVANTILAL v. DALVI*** when refusal to renew registration of monthly magazine by the Postmaster-General is challenged, the Bombay High Court after considering Section 9 and Rule 30, referred to above, in para-12 held as under:

"It is clear to me that under sub-clause (1) of Rule 30 a publication which falls within the wider connotation of the word "newspaper" as contained in sub-clause of Sec.9 is entitled to and/or acquired the right to be transmitted by post as registered newspapers provided certain administrative conditions as found in the aforesaid provisions were satisfied. The right to be transmitted as registered newspapers is nothing but the right as are to be found in the first schedule. That

> is the statutory right and there is no doubt that ordinarily stated a citizen whose publication consists of such material as mentioned in sub-clause (2) of Sec.9 is denied registration would have legitimate and justifiable grievance and would be entitled to a declaration under Sec. 42 of the Specific Relief Act in connection with such grievance. In such a case it would be for the Court to give the citizen such appropriate relief as necessary so that his publication may become registered newspaper and his publication would be transmitted by payment at concessional rates as provided by the Act."

After taking note of the amendment made to Rule 30(3) the Court held as under:

> "xxxxxxxxx It is obvious that the original application for registration as registered newspapers as also an application for renewal of registration must fulfil all provisions of sub-clause (2) of Sec.9 and the conditions, in sub-clauses (1) and (2) of Rule 30. Whether an applicant's periodical, magazine or newspaper satisfies the said provisions and conditions is a question left to the decision of the Post Master General or other officer as mentioned in the note and the sub-rule (5) of Rule 30 mentioned above. It is also obvious that there is no provision in the rules for a right of hearing to the party concerned or an obligation to assign or state reasons for the decision made or for an appeal against the decision. In the absence of such provisions, it would be impossible for me to hold that the question is directed to be determined judicially. On the contrary the absence of any provisions in respect of the aforesaid mattes is indication that the question is left to be determined and is wholly in the discretion of the executive authority, Post Master General and/or other officer as mentioned in the rules. The question is thus in my view left to be determined by subjective satisfaction of the executive authority and it is not left open for the Court to examine into the facts of any periodicals, magazine or newspapers to find out whether the same satisfied the provisions of sub-section (2) of Sec.9."

Learned counsel for the petitioner, except stating that respondent authorities have not assigned any reasons for rejection of renewal, has not substantiated as to how the petitioner is entitled to circulation of magazine "Study @ ICFAI" at concessional rates basing upon the Certificate issued by the Registrar of Newspapers, in which it is clearly stated in column-5 that the magazine in question is circulated at free and no list of subscribers who have paid their subscriptions was enclosed for such

registration nor recorded by the Registrar of Newspapers of India.

The claim of petitioner's entitlement to register with the Postal Department/its renewal to avail the benefit of concessional postal rates has to be examined strictly in accordance with the statutory provisions and the rules made thereunder. It is well settled proposition of law that any proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and does not extent to the merits of the decision taken. Much of the grievance sought to be vindicated, namely, no reasons were assigned in rejecting the renewal and the same cannot be supplemented by way of counter-affidavit. Assumed grievances apart, it must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Sub-Section (2) of Section 9 prescribes conditions for registration of newspaper or publication that *it is published in numbers at intervals of not more than thirty-one days and it has a bona fide list of subscribers.* In the absence of any bona-fide list of subscribers to subscribe such magazine, petitioner cannot avail such benefit provided under Rule 30 or can claim registration of the newspaper for such concession. In view of the same, impugned order passed by the 1st respondent not granting renewal of registration of "Study @ ICFAI" as the magazine is intended for free distribution and not eligible do not suffer from any infirmity and the same is in accordance with the statutory provisions. The order does indicate the reasons why the petitioner is not entitled to renewal of registration, namely, *magazine is intended for free distribution and as such it is not eligible*. In the absence of any evidence adduced contra that it satisfied the conditions prescribed under sub-Section (2) of Section 9 of the Act and its entitlement to registration, the order passed by the 1st respondent refusing to renewal of registration cannot be termed as arbitrary and illegal.

It is not in dispute that other journals were registered under Section 9 and Rule 30 on satisfying the conditions prescribed for transmission on concessional rates. Even the magazine "Study @ ICFAI" was also initially registered and the period was also extended upto 30-04-2001. In view of the same, mere service of notice without giving an opportunity to the petitioner and refusing to accept the other journals until the due amount is paid will amount to coercive step and the respondents cannot

refuse to receive such magazines which in fact amounts to canceling registration of such magazines during its entitlement on concessional rates. In view of the same, authorities are not justified in refusing to accept the other journals until the dues on “Study @ IFCAI” are paid. However, by virtue of interim order granted by this Court petitioner was permitted to transmit the copies of “Study @ ICFAI” on concessional rates. In view of the same, it is always open for the respondents to issue necessary notice with due particulars and proceed to recover the due amount, if any, in accordance with law after giving due opportunity to the petitioner.

Accordingly, W.P.No.4893 of 2001 is disposed of and W.P.No.10420 of 2001 is dismissed. But, however, in the circumstances of the case, there shall be no order as to costs.

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A.GOPAL REDDY,J.

05-07-2004

Murthy

L.R. to be marked.

To

1. One fair copy to the Honourable Mr.Justice A.Gopal Reddy

(for his Lordships kind persusal)

2.The Assistant Superintendent, R.M.S., Department of Posts,

Hyderabad PSO &BMC, Hyderabad-500 001.

3. Senior Superintendent of Post Offices, RMS Department of Posts,

Kachiguda Station, Kachiguda, Hyderabad 500 027.

4. The Deputy Superintendent of Post Offices,

Department of Posts, Hyderabad City Division, Hyderabad-500 001.

5 Sr. Superintendent of Post Offices,
Hyderabad City Division, Hyderabad-1

6 Director Postal Service, office of chief Post Master General , AP. Circle
Dak Sadan, Abids,
Hyderabad-1

7. Chief Posts Master General ,
AP Circle Dak Sadan, Abids,
Hyderabad-1

8 Deputy Director General , (PO&I) Department of Posts,
Ministry of Communications, Dak Bhavan, New Delhi

9. 8 L.R. copies.

10 The Under Secretary, Union Of India, Ministry of Law, Justice and Company affairs, New Delhi.

11. the Secretary, A.P. Advocates' Association, Library, High court Buildings, Hyderabad.

12. Two CD copies.